

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
PACIFICORP FOR APPROVAL OF A POWER)	CASE NO. PAC-E-05-9
PURCHASE AGREEMENT FOR THE SALE)	
AND PURCHASE OF ELECTRIC ENERGY)	
BETWEEN PACIFICORP AND)	ORDER NO. 29880
<u>SCHWENDIMAN WIND LLC</u>)	

On August 15, 2005, PacifiCorp dba Utah Power & Light Company (PacifiCorp; Company) filed an Application for approval of a Power Purchase Agreement ("Agreement") for the sale and purchase of electric energy between PacifiCorp and Schwendiman Wind LLC ("Schwendiman").

The Commission in this Order rejects the filed Application because the Agreement does not include a "90/110% performance band," a provision that defines a minimum degree of predictability required for published rate eligibility. The Commission finds that the 90/110 performance band established in Order No. 29632 or a similarly rigorous requirement is necessary to assure that PacifiCorp's customers will receive the generation product they are paying for. The Commission, based on the established record, finds that the Agreement's "Mechanical Availability Guarantee" (MAG) is an unacceptable substitute for the 90/110 performance band and fails to sufficiently protect ratepayers from overpaying. An Agreement without such a provision, the Commission finds, is neither reasonable nor in the public interest. The Commission expresses support for wind generation and therefore provides the parties 14 days to submit an amended Agreement containing a 90/110 performance band. If an amended Agreement is not submitted, the Application will be dismissed without prejudice.

BACKGROUND

Under the proposed Agreement, Schwendiman will sell and PacifiCorp will purchase non-firm electric energy generated by the Schwendiman Wind Facility ("Facility") located near Idaho Falls in Bonneville County, Idaho, in an area more particularly described as Sections 3 and 4, Township 2 North, Range 39 East and Sections 33 and 34 of Township 3 North, Range 39 East, Boise Meridian, Bonneville County, Idaho. Schwendiman intends to operate the 17.5 MW Facility as a qualified small power production facility (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA).

Pursuant to PURPA and related regulations promulgated by the Federal Energy Regulation Commission (FERC), an electric utility, such as PacifiCorp, is required to purchase electric energy from eligible QFs. 16 U.S.C. § 824a-3(a); 18 C.F.R. § 292.303. The state commissions set the rate for such purchases. 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.304. These rates must be just and reasonable to the utility's customers and in the public interest and must not discriminate against qualifying cogenerators or small power producers. *Id.*

The PURPA rate requested is a pre-established, published rate. In order to qualify for the published rate, a QF must meet an eligibility cap limiting the size of the project. In addition, the QF contract must be submitted for Commission review and approval. The Commission reviews all contract terms and conditions to ensure that they are just and reasonable, in the public interest, and comply with prior Commission orders and requirements.

A. Eligibility Cap

On August 4, 2005, the Commission temporarily reduced the eligibility cap for non-firmed wind projects in Idaho from 10 average megawatts (aMW) to 100 kilowatts (kW). *See* Order No. 29839 (Case. No. IPC-E-05-22). At the same time, the Commission determined that certain wind QFs with capacity in excess of 100 kW but less than 10 aMW that met certain "grandfathering" requirements could be eligible under the previous eligibility cap. *Id.* On September 21, 2005, after comments were due in this case, the Commission on reconsideration determined the date for determining grandfathering eligibility is August 4, 2005, the date the interlocutory Order was issued. *See* Order No. 29872.

B. 90/110 Percent Performance Band

In addition to the eligibility cap, the Commission has also required that QFs meet certain performance criteria in order to be eligible for the published rates. *See* Order No. 29632, Case Nos. IPC-E-04-8 and 04-10. These performance criteria are necessary in order to establish "firmness" or predictability, which the Commission has found is a measure of monthly production.¹ This monthly measure is reflected both in the eligibility cap, which is 10 aMW measured on a monthly basis, and the 90/110 performance band, which measures average monthly performance against average monthly projected performance. *Id.*

¹ "The Commission finds it reasonable to define firmness as predictability on a monthly basis." Order No. 29632, at 14.

The 90/110 performance band was developed to address the firmness issue associated with the intermittent nature of wind. *Id.* Under the performance band concept, the QF is required to make monthly production estimates. *Id.* at 15. Energy produced below 90 percent or above 110 percent of the monthly forecasted production is priced at a discount equal to 85% of the market or contract price, whichever is less. *Id.* at 20. This discounted pricing scheme serves both as an incentive for the QF to make the most reliable estimates possible as well as a means of compensating the utility when the QF delivers less reliable or non-firm energy.

THE APPLICATION

The Application includes a formal pleading submitted by PacifiCorp; a letter from Brian Jackson, project engineer demonstrating how the Agreement satisfies the grandfathering provisions of Order No. 29839; and the Agreement itself for Commission review.

The pleading, dated August 15, 2005, describes how the Agreement meets previous Commission Orders and includes the published rates. The pleading does not address the absence of the 90/110 performance band issue nor does it describe the mechanical availability guarantee (MAG) concept.

The Agreement, dated July 19, 2005, includes provisions relating to the Commission's 10 aMW published rate eligibility cap. Accordingly, pursuant to the Agreement, Schwendiman is required to provide certain data to PacifiCorp in order that PacifiCorp may determine whether, under normal or average conditions, the Facility will not exceed 10 aMW on a monthly basis. Furthermore, should the Facility exceed 10 aMW on a monthly basis, PacifiCorp will accept the energy but will not purchase or otherwise pay for the accepted excess energy.

The Agreement does not contain a 90/110 percent performance band provision. The Agreement contains what PacifiCorp refers to as a Mechanical Availability Guarantee (MAG). The MAG is based on the annual availability of the wind turbines. "Availability" is defined, in part, as "the percentage of time that the Facility is actually producing Net Energy compared to the total amount of time that the Facility could have produced Net Energy. The total amount of time that the facility could have produced Net Energy is determined by taking the total hours in the measurement period and deducting the total number of hours of non-generation due to lack of sufficient wind, force majeure, and scheduled maintenance." Agreement, Section 1.2. Under the Agreement, Schwendiman's average availability must equal or exceed the following: 75% for

Contract Year 1; 85% for Contract Years 2-10; and 80% for Contract Years 11-20 or Schwendiman is liable for liquidated damages. Agreement, Sections 4.3; 5.2; 5.3.

The liquidated damages provided in the Agreement are based, in part, on the replacement price² for the output shortfall. *Id.* at 12. When an output shortfall occurs and the replacement price exceeds the contract price, then Schwendiman must pay PacifiCorp the difference between the replacement price and contract price for the shortfall amount. *Id.* The Agreement also provides that PacifiCorp will accept energy produced above the 10 aMW threshold but will not pay for this “inadvertent energy.” *Id.* at 13.

On August 31, 2005, the Commission issued a Notice of Application and solicited comments regarding the proposed Agreement. *See* Order No. 29862. Comments were received from the Commission Staff; PacifiCorp; Schwendiman and others involved with the Schwendiman project; Exergy Development Group of Idaho, Inc. (“Exergy”); Idaho State Representative Ann Rydalch; the Bonneville County Commissioners; and 31 private citizens.

THE COMMENTS

The Commission received 41 comments in this case, the overwhelming majority of them supporting the Application. Most of the public comments in support of the Application express support for wind power in general and for the particular efforts of the Schwendimans. The public comments opposed to the Application cite esthetic and environmental concerns. In contrast and as developed more fully below, the commenting parties focused on two central legal arguments: whether the grandfathering provisions set forth in Order No. 29839 and the 90/110 performance band approved in Order No. 29632 apply to this Application.

Commission Staff

According to Staff, the grandfathering provisions of Order No. 29839 apply to PacifiCorp, because the Commission, upon petition from PacifiCorp and Avista, decided to treat all three utilities, PacifiCorp, Avista, and Idaho Power, the same for the purpose of developing “procedural and regulatory treatment as pertains to the availability of published rates for wind QFs” in the context of Case No. IPC-E-05-22. Staff Comments at 4. This was a decision based, in part, on administrative efficiency. *Id.* Further, despite the fact that the grandfathering

² The replacement price is defined in the Agreement as “the annual average Index Price ... plus additional transmission charges, if any, reasonably incurred by PacifiCorp for delivery of the replacement energy ... if not included in the Replacement Price.” Agreement at 6.

provisions are subject to petitions for reconsideration and stay, Staff argues that Order No. 29839 is in effect until those petitions are decided. *Id.* at 4-5.³

Staff recommends that the Commission deny the Application because the Agreement does not contain a 90/110 percent performance band as required pursuant to Order No. 29632. *Id.* at 8. Staff argues that the 90/110 performance band is a requirement for all PURPA contracts in Idaho, including the instant Agreement, and, even if it was not a requirement, the Agreement fails to provide a sufficient alternative to address the value of non-firm versus firm energy. *Id.*

The 90/110 performance band requirement was developed in the context of two consolidated cases, IPC-E-04-8 and IPC-E-04-10. These cases arose out of two separate complaint actions filed by QFs against Idaho Power alleging that Idaho Power was requiring unlawful contract provisions in its PURPA contracts. According to Staff, all three utilities, including PacifiCorp, participated in the proceedings because they involved generic issues related to the methodology for computing published rates and refining the criteria necessary to qualify for these rates. *Id.* at 2, n. 1. At that time, PacifiCorp's own witness, Laren Hale, testified that QFs should be required to commit to monthly delivery schedules in order to obtain firm energy prices. *Id.*; Tr. IPC-E-04-8(-10) pp. 496, 510. Indeed, PacifiCorp requested that it be allowed to fashion a similar provision to its standard purchases in Idaho. *Id.* p. 512.

In the alternative, Staff argues that, even if the Commission determines that the utilities are free to develop their own contract terms to address the firmness and reliability issues, this Agreement fails to adequately address these issues. *Id.* at 8. Staff notes that the 90/110 performance band is based on monthly generation in order to ensure a reasonable degree of firmness, while the "Minimum Availability Obligation," also referred to as the Mechanical Availability Guarantee (MAG), is based on annual generation. *Id.* According to Staff, the annual measure fails to address concerns relating to reliability and predictability that are addressed by the performance band. *Id.*

PacifiCorp

PacifiCorp filed Reply Comments in opposition to Staff's comments. PacifiCorp's Reply Comments focus primarily on the 90/110 performance band issue. PacifiCorp does not

³ No comments dispute (1) that the grandfathering provisions are in effect until a decision on the petitions to stay and reconsideration is made or (2) that Schwendiman actually meets the grandfathering requirements. However, Schwendiman argues that the grandfathering provisions do not apply to this Agreement because PacifiCorp is not faced with a high number of QF contracts as Idaho Power is.

believe that the 90/110 performance band established in Order No. 29632 should be a requirement in all PURPA contracts involving intermittent wind and contends that the MAG concept serves a reasonable alternative to the performance band concept.

PacifiCorp argues that the Commission in Order No. 29632 did not require all utilities to apply the 90/110 performance band standard. PacifiCorp Reply Comments at 1. First, PacifiCorp asserts that the Commission did not expressly provide that the Order was generally applicable. *Id.* at 2. Second, PacifiCorp states that the Commission specifically framed the 90/110 performance band concept as an Idaho Power contract issue and in Order No. 29632 determined only that it was reasonable for Idaho Power to require QFs to agree to a 90/110 performance band. *Id.* In contrast, the eligibility cap, also an issue in the case, was framed as a generic issue. *Id.* Thus, PacifiCorp argues that the Commission could have framed the 90/110 performance band as a generic issue, but it did not, indicating that the performance band concept was specific to Idaho Power. *Id.* at 3.

Further, although PacifiCorp admits that it supported the 90/110 performance band concept and the monthly measure of firmness in the consolidated cases of Case No. IPC-E-04-8 and IPC-E-04-10, it states that it was not its intention to support the performance band as the sole means of addressing reliability issues foreclosing all other approaches. *Id.* PacifiCorp explains that it has developed an effective alternative approach, the MAG, to address the concerns that led Idaho Power to develop the 90/110 performance band. *Id.*

PacifiCorp argues that the MAG is preferable to the 90/110 performance band, because the MAG is a more accurate predictor of energy delivery. *Id.* at 4. According to PacifiCorp, QFs cannot accurately predict monthly generation six months in advance nor can they control the weather. *Id.* In contrast, PacifiCorp asserts that consistently available turbines result in more predictable energy and that the availability of the turbines is within the control of the QF. *Id.* Thus, PacifiCorp prefers the MAG as a measure of QF performance.

Comments of Schwendiman Counsel

Schwendiman argues that the grandfathering provisions in Order No. 29839 should not be part of the Commission's analysis. Schwendiman argues that the grandfathering requirements, or "exemption analysis," were developed in the context of the Idaho Power case and "assume the existence of numerous potential projects and the resulting need to draw a line between those that should be allowed to proceed under the old rules and those that should not, so

that the utility is not required to acquire ‘too much’ QF wind generation.” Schwendiman Reply Comments at 2. This may be the case for Idaho Power, but, according to Schwendiman, this is not the case for PacifiCorp. *Id.* Regardless, Schwendiman supports Staff’s analysis concluding that Schwendiman satisfies the grandfathering criteria. *Id.* at 2-3.

Schwendiman argues that the Agreement should be approved despite the absence of a 90/110 performance band. Schwendiman, like PacifiCorp, argues that in Order No. 29632, the Commission framed the 90/110 performance band issue specific to Idaho Power and found that it was reasonable for Idaho Power to include a 90/110 performance band in its standard power purchase agreements. *Id.* at 3-4. According to Schwendiman, this did not foreclose other parties from negotiating their own means of addressing the firmness issue. *Id.*

Comments of Brian Jackson

Brian Jackson, project engineer for Schwendiman, also argues that the 90/110 percent performance band is not a requirement for all PURPA contracts in Idaho. According to Mr. Jackson, the 90/110 performance band is a “contract structure existing uniquely in Idaho Power contracts.” Jackson Comments at 1. Mr. Jackson opposes such a performance band because it “benefits the utility most to the disadvantage of the ratepayer and the pain of the developer.” *Id.* Further, the band is based on monthly predictions, which Mr. Jackson argues are extremely difficult to predict.

Mr. Jackson further argues that the Agreement addresses the concerns of firmness or reliability. The contract requires the developers to predict the wind resource and continuously update predictions without fear of penalty, a process that Mr. Jackson believes leads to “the most accurate predictions possible.” *Id.* at 2. In addition, the contract has certain availability requirements and documentation of performance “providing serious penalties to the developer if the maintenance of the plant is below specified standards.” *Id.* According to Mr. Jackson, the availability requirements serve as a more effective incentive than the forecasting requirements, because the developer can control availability but not the weather. *Id.* at 4. Further, according to Mr. Jackson, the availability requirements can be made part of the wind turbine contract warranties to further ensure project availability.

Exergy

Exergy is a developer of wind power and a non-party in the instant proceeding. Nonetheless, Exergy filed Reply Comments in opposition to Staff’s analysis. Like PacifiCorp

and Schwendiman, Exergy argues that the 90/110 performance band does not apply to PacifiCorp but is limited to Idaho Power. Exergy Reply Comments at 2. According to Exergy, “before the conclusion can be reached that the contract must be rejected for failure to comply with the 90/110 band, the Staff must show that the band actually applied to PacifiCorp.” *Id.* at 1. Exergy argues that Staff failed to meet this burden. *Id.*

In addition, Exergy argues that the MAG is a superior alternative to the 90/110 performance band concept, because “the developer is responsible to insure the facility is on line and available to produce power a certain percentage of the time.” *Id.* at 2. Exergy further recommends that the Commission apply this alternative approach to all PURPA contracts.

Public Comments

The Commission received additional comments in support of this Application from Idaho State Representative Ann Rydalch, the Bonneville County Commissioners, and approximately 35 members of the public. The numerous comments are summarized below.

Representative Rydalch supports the Application because it benefits small business and energy development, policy areas she says are supported by the entire State Legislature as well. The Bonneville County Commissioners support the Application stating that they have supported Schwendiman’s efforts to construct a wind farm since 2002, based in part on the project location and the fact that the Schwendimans have been farming in the county for several generations. In addition, the County Commissioners noted the importance of small and large wind farms to the county in terms of clean alternative energy and job creation.

The remaining public comments filed in support of the Application support the Agreement because it fosters “independence from out of state power plants and fossil fuel power”; helps the state move away from “burning our hydro-carbon resources and destroying our wildlife and recreational landscape with hydro-electric facilities just to produce power”; supports “clean power,” “green power,” or “conserving our natural resources”; supports local farms and agriculture; supports small business and moves away from monopoly control over power production; promotes the development of multiple or diverse sources of energy; provides an “economical use of marginal land”; sets a stable price for 20 years in a market of increasingly volatile fuel costs; promotes national security; reflects the State Legislature’s support of wind power; and will increase the tax base for the county and state. More project-specific support

included comments highlighting Schwendiman's efforts to get this Power Purchase Agreement signed and the particularly strong wind available at this site.

Additional comments in support of the Application encourage the Commission to view the participation in green power initiatives at Idaho Power and PacifiCorp as evidence of the public's interest in renewable energy and willingness to pay extra for such power. Four comments voiced concern over the Commission's decision to lower the PURPA contract eligibility cap and another four comments specifically voiced opposition to the 90/110 performance band. In addition, one commenter in favor of the Agreement noted that the Facility is part of the United States Department of Agriculture (U.S.D.A.) rural development grant program and has already passed U.S.D.A. "due diligence."

Although there were three public comments filed in opposition to this Application on the basis of siting and environmental concerns, the Commission does not have jurisdiction over these issues.

COMMISSION FINDINGS AND CONCLUSIONS OF LAW

The Commission has reviewed and considered the filings of record in this case, including the Application, the Agreement, and related comments. We have also reviewed the record, transcript and our Orders in Case Nos. IPC-E-04-8 and IPC-E-04-10; and our Orders in Case No. IPC-E-05-22. Based on this record and as more fully detailed below, the Commission finds that the grandfathering provisions set forth in Order No. 29839 (Case No. IPC-E-05-22) do not apply to this Application. We find, however, that the Agreement fails to include a 90/110 performance band or a similarly rigorous requirement defining the predictability required for published rate eligibility. Reference Order No. 29632. We find that the Agreement is otherwise acceptable. Therefore, the Commission rejects the Agreement as filed and allows the parties 14 days to file an amended Agreement that includes a 90/110 performance band.

Grandfathering Criteria

The Commission finds that the grandfathering provisions set forth in Order No. 29839 do not apply to this Application. Pursuant to Order Nos. 29839 and 29872 in Case No. IPC-E-05-22, the Commission lowered the eligibility cap for PURPA contract rates from 10 aMW to 100 kW effective August 4, 2005, the date interlocutory Order No. 29839 was issued. Because the Schwendiman Agreement is signed and dated July 19, 2005, it is subject to the

previous eligibility cap of 10 aMW and there is no need to demonstrate how the Facility meets the grandfathering requirements of Order No. 29839.

The 90/110 Percent Performance Band

The Commission clarifies that the 90/110 performance band established in Order No. 29632 is applicable to all three utilities, PacifiCorp as well as Idaho Power and Avista. The Commission develops its PURPA contract standards and requirements in generic methodology, ratesetting and complaint cases. Reference *Rosebud Enterprises v. Idaho Public Util. Comm'n*, 128 Idaho 609 at 615 (1996). It is reasonable for QFs to expect that the contract requirements of Idaho's regulated electric utilities will be similar and that a QF will not be disadvantaged by choosing to sell to one utility rather than another. The Commission finds it puzzling that PacifiCorp would argue that the 90/110 performance band is not directly applicable to PacifiCorp given PacifiCorp's active participation in the U.S. Geothermal/Lewandowski complaint proceedings (Case Nos. IPC-E-04-8 and IPC-E-04-10). PacifiCorp waited until its Reply Comments to explain that it developed the MAG concept in the Agreement as an alternative to the 90/110 performance band. PacifiCorp Reply Comments p. 4. We put PacifiCorp on notice that the Commission expects a utility's inclusion of substitute germane contract provisions in a PURPA Power Purchase Agreement to be specifically mentioned in an application for contract approval. PacifiCorp in this case failed to do so and in fact represented "the Agreement contains the PURPA terms and conditions previously approved by the Commission in other PURPA agreements and as revised by Commission Order No. 29632 in Case No. IPC-E-04-8 (U.S. Geothermal complaint)." Application, Section II.

Although the Commission may consider equivalent alternatives to the 90/110 performance band approach, the Commission finds that the MAG concept is neither a reasonable nor an equivalent substitute for the 90/110 performance band. The use of average annual energy was proposed, considered and rejected in the U.S. Geothermal/Lewandowski proceedings in favor of a monthly average. Mechanical or operational availability, we find, is nothing other than an average annual calculation of energy. As indicated by PacifiCorp witness Hale in the 90/110 band proceedings in discussing the economic cost associated with limitations as to the time of day, month or year when a QF delivers its generation:

QFs receiving standard tariff prices are effectively being over paid to the extent their power is less valuable than the power associated with the proxy resources. The less control or notice the utility has over the timing and extent

of deliveries, the greater the overpayment . . . Effectively this cost is a subsidy from ratepayers to the QF.

Id. Tr. p. 508. In approving QF power purchase agreements, this Commission authorizes payments made pursuant to the agreement as prudently incurred expenses for ratemaking treatment. The Commission has a fundamental responsibility under state law to ensure that all rates are “just and reasonable.” *Idaho Code* § 61-301. Moreover, when implementing its duties under PURPA and FERC’s implementing regulations, the Commission must ensure that the PURPA rates are just and reasonable to the utility’s customers, as well as in the public interest. 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.304. The Commission has already determined that the 90/110 performance band is a just and reasonable way to address the costs associated with the intermittent nature of wind power. *See* Order No. 29862. The 90/110 performance band defines a minimum degree of predictability required in order to qualify for the published rates for firm energy. The purpose of the 90/110 performance band is to more fairly match the price paid to the value of the product provided as measured by reliability and predictability.

In addition, absent valid considerations for rate differentiation, the Commission cannot approve terms in one contract that are substantially less rigorous than the terms required in other contracts. *See Idaho Code* § 61-315; *Grindstone Butte Mutual Canal Co v. Idaho Public Utilities Comm’n*, 102 Idaho 175 (1981); *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415 (1984). The 90/110 performance band offers regulatory certainty that would be eroded if an alternative and less rigorous standard were accepted. In this current case, no argument is made that suggests that the Schwendiman project offers any unique characteristics that might warrant contractual arrangements that are different from those accepted by other projects of the same size and scope.

The Commission has three primary concerns with the MAG approach as an alternative to the 90/110 performance band. First, the Commission has already determined that QF production should be measured on a monthly basis. In Order No. 29632, the Commission expressly states, “QF generation should not be measured on an hourly, daily or weekly basis but rather on a monthly basis.” Order No. 29632 at 14. PacifiCorp’s witness Hale in the 90/110 proceedings supported such a monthly delivery schedule requirement of QFs as a condition of receiving standard tariff firm energy prices. Hale, Tr. p. 510. Both the initial capacity determination and the 90/110 performance band reflect this monthly measure of power

generation. In contrast, the MAG is based on an annual measure of QF availability and, thus, is not a sufficient measure of power generation.

Second, the MAG does not provide a pricing mechanism to differentiate the value of the power based on its reliability or predictability for planning purposes. Because the relative predictability of the power source has an associated value, in part, due to the relatively higher costs of intermittent power compared to a more constant energy source, the pricing should reflect these costs. The MAG is based on availability of the turbines on an annual basis no matter the reliability or predictability of the energy source. Thus, the MAG pricing does not measure or reflect the predictability of the energy source as the 90/110 performance band does.

Third, the Commission finds that the MAG provision is substantially less rigorous than the 90/110 performance band. Further, the Commission does not find any valid reason for differentiating this PURPA project from the other intermittent wind projects before the Commission. Absent a valid reason for differentiation, the Commission concludes that it must enforce the same obligations on Schwendiman as it does the other intermittent wind QFs submitting PURPA contracts for Commission approval.

In sum, the above-described concerns demonstrate that the MAG does not provide a reasonable or equivalent substitute for the 90/110 performance band and is not sufficient to protect ratepayers from overpaying. An agreement without such a provision, we find, is neither reasonable nor in the public interest. Therefore, the Commission rejects the Agreement as filed.

Nonetheless, the Commission finds that the Agreement's other terms and conditions meet the Commission's requirements for published rate eligibility. We continue to be supportive of wind generation and as we indicated in the Commission's open docket examining the integration costs of intermittent wind, we believe that wind is a proven technology that can be an important addition to utility resource portfolios when properly integrated. Because the Schwendiman Agreement's other terms and conditions meet the Commission's requirements and because the Commission has previously determined that the 90/110 performance band is a reasonable means of addressing the intermittent nature of wind power, the Commission offers the parties an opportunity to amend the Agreement by adding a 90/110 performance band. If the parties amend the Agreement as described and file the amended Agreement within 14 days, the Commission will approve the amended Agreement and Application. Should the parties decide not to amend the Agreement, the Application is dismissed without prejudice.


ORDER

In consideration of the foregoing and as more particularly described and detailed above, IT IS HEREBY ORDERED that PacifiCorp and Schwendiman be permitted to file an amended and conforming Agreement within 14 days of the issue date of this Order.

IT IS FURTHER ORDERED that, if PacifiCorp and Schwendiman do not file an amended and conforming Agreement within 14 days of the issue date of this Order, the Application in Case No. PAC-E-05-9 is dismissed without prejudice.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 4th day of October 2005.



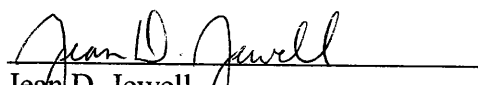
PAUL KJELLANDER, PRESIDENT

Commissioner Smith Dissent Opinion Attached
MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:

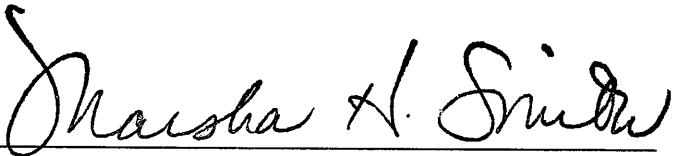


Jean D. Jewell
Commission Secretary

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**COMMISSIONER MARSHA H. SMITH
DISSENTING OPINION
CASE NO. PAC-E-05-9
ORDER NO. 29880**

Consistent with my dissent from Order No. 29632, I dissent from the majority decision in this case. I do not believe that the Commission's decision in Order No. 29632, which established the 90/110 performance band in Idaho Power's PURPA contracts, should be interpreted as a requirement that all PURPA contracts in Idaho include a 90/110 performance band or even that all of Idaho Power's PURPA contracts include such a performance band. Utilities and QFs are free to negotiate terms and conditions they see fit subject to Commission approval. If the Agreement is just and reasonable and not adverse to the public interest, the Commission should approve the contracts submitted. Generic application of the 90/110 performance band to all Idaho QFs under 10 aMW is burdensome and unnecessary. The MAG approach is reasonable, specifically tailored to the needs of these contracting parties and is not adverse to the public interest. Thus the contract should be approved as filed. Accordingly, I respectfully dissent from the Commission's decision.


MARSHA H. SMITH, COMMISSIONER